the plaintiffs thought that I would request for the documents if I thought they were going to be necessary, bearing in mind that if the plaintiffs were, for example, to succeed on the third preliminary issue there would be no need to go on to the fourth. That being the position and as counsel informed the court that there was correspondence between the parties highly material to the fourth issue, ie exercise of my discretion under s 8, I thought it is only fair and just that I should hear him on that. Accordingly, I recalled my earlier judgment. This procedure is not without precedent. Paragraph 42/1/4 on p 661 of *The Supreme Court Practice 1988* has the following passage:

> A judgment takes effect from the time when the judge pronounces it and the subsequent entry of it is a mere form in obedience to the direction of the court ... but it is within the powers of a judge to alter his judgment at any time before it is entered and perfected.

A similar situation occurred in *Lim Yam Teck* v *Lim Swee Chiang*.[16] There the learned judge, after dismissing the plaintiff's claim, recalled the parties and heard further arguments, as a result of which judgment was entered for the plaintiff. The case went on appeal to the Court of Appeal and the appeal was dismissed.

Order accordingly.

Solicitors: *Murphy & Dunbar*; *Godwin & Co.*

Reported by *PS Ranjan*

Re Cosmotron Electronics (Singapore) Pte Ltd

HIGH COURT (SINGAPORE) – ORIGINATING PETITION NO 5 OF 1989
CHAN SEK KEONG J
10 FEBRUARY 1989

Companies and Corporations – Judicial management – Petition for – Company unable to pay its debts – Company entered into relocation agreement to sell off its plant and machinery to third party – Creditors opposed petition – Whether petition was made bona fide – Whether public interest under s 227B(10) must be proved in addition to other requirements under s 227B(1) of Companies Act for petition to succeed – Companies Act (Cap 50, 1988 Ed), ss 227A, 227B(1), (7) & (10)

This is a petition by Cosmotron Electronics (Singapore) Pte Ltd ('the company') for an order that the company be placed under judicial management. The company carries on the business of manufacturing printed circuit boards in Singapore. It has a manufacturing plant which, together with its undertaking and other assets, has been charged to Indian Bank under a debenture to secure banking facilities of $900,000. The company is unable to pay its debts and its creditors, including Indian Bank and Mayertro Industrial Pte Ltd, have been pressing for payment for some time. Indian Bank had given notice of its intention to appoint receivers and managers under their debentures prior to the presentation of this petition by the company.

On 6 November 1988, the company entered into an agreement ('the relocation agreement') to sell the company's plant and machinery to a third party. In its petition, the company stated that unless it is able to 'see through the relocation of its manufacturing assets and complete its outstanding contracts there is no money ... now or in the future to pay off even part of its said aggregate debts ...'. For this reason, the company is of the view that placing the company under judicial management would 'achieve the survival of the company on the whole or part of its undertaking as a going concern and a more advantageous realization of the company's assets would be effected than through a winding up and the interest of the creditors would be better served'. The petition was opposed by Indian Bank, Mayertro and three other unsecured creditors on the grounds that the petition was not made bona fide and that no public interest was involved in this petition. Indian Bank has, in fact, exercised their powers as debenture holders and appointed receivers and managers of the undertaking and assets of the company but the officers were unable to assume office because of this petition. In its argument on public interest, Mayertro contended that by reason of s 227B(10) of the Companies Act ('the Act'), a company seeking a judicial management order must, in addition to satisfying the court of the requirements of s 227B(1), prove that the public interest so requires it.

Held, dismissing the petition:

(1) The court is satisfied that the company was unable to pay its debts but it did not consider that the making of the order would be likely to achieve any of the purposes set out in s 227B(1)(b) of the Act for the following reasons. Firstly, the survival of the company did not depend on placing the company under judicial management so much as ensuring that the relocation agreement was implemented by the parties. If the purposes sought to be achieved by the company in judicial management can equally be achieved by the creditors without detriment to the company or its shareholders, the company has not made out a valid case for depriving a secured creditor of its contractual right to assume possession and control of its security. Secondly, since the company has agreed to dispose of its manufacturing plant which, in effect, constitutes its entire undertaking, the question of rehabilitating the company or of preserving all or part of its business as a going concern does not arise. Thirdly, the company has also failed to show that placing the company under judicial management would result in a more advantageous realization of the company's assets than on a winding up. Finally, the relocation agreement contained an open-ended term which calls into question the bona fides of this transaction.

(2) Mayertro's contention as to proof of public interest is not the correct approach to interpreting s 227B(10). Section 227B(10)(a) has the effect of vesting in the court an overriding power to make a judicial management order if it considers the public interest so requires, notwithstanding that it may not be satisfied that the making of the order would be likely to achieve one or more of the purposes set out in s 227B(1). This is undoubtedly the effect of s 227B(10)(a) in relation to s 227B(1).

(3) Since the existence of 'public interest' in s 227B(10) is a requirement for the exercise of an overriding power, it would connote an interest or object which, if achieved, would transcend any or all of the purposes prescribed in s 227B. As there was no evidence to support a claim that in this petition public interest requires that the company be placed under judicial management, the petition is accordingly dismissed.

Legislation referred to
Companies Act (Cap 50, 1988 Ed) ss 227A, 227B(1), (7), (10)

April Jacqueline Loh (Ms) for the petitioner.
K Bala Chandran for the debenture holder.
Ng Kai Ming for the receivers and managers of Mayertro Industrial Pte Ltd.

Cur Adv Vult

Chan Sek Keong J: This is a petition by Cosmotron Electronics (Singapore) Pte Ltd ('the company') for an order that the company be placed under judicial management.

The company was incorporated on 17 October 1986 with an authorized capital of $5m divided into five million shares of $1 each. At the date of this petition, the company had a paid-up capital of $2,314,000.

The company carries on the business of manufacturing single-and double-sided printed circuit boards in Singapore. It has a manufacturing plant which together with its undertaking and other assets has been charged by way of fixed and floating charge to the Indian Bank under a debenture dated 29 October 1987 to secure banking facilities of $900,000. The plant is subject to a fixed charge.

The company is unable to pay its debts. It currently has three outstanding contracts with an aggregate value of $305,000 to fulfil within two to six months from the date of this petition. Its liabilities (both secured and unsecured) as at 31 December 1988 amounted to about $901,650. The creditors have been pressing for payment for some time. Indian Bank had given notice of its intention to appoint receivers and managers under their debenture prior to the presentation of this petition but refrained from doing so in response to promises to pay by the principal shareholder and/or to find new investors for the company. The company's plant is located in a factory rented at a monthly rent of $13,000 from a creditor, viz Mayertro Industrial Pte Ltd (a company which is in receivership). Rent has not been paid since July 1988 and Mayertro has on 13 January 1989 obtained judgment against the company for the arrears of rent as well as possession of the premises.

To alleviate its financial difficulties, the company has sought temporary finance from a company called South Asian Exports Pte Ltd which, it was alleged, had agreed to grant a loan of $200,000 in four instalments of $50,000 to be disbursed on 14 and 25 November 1988 and 5 and 15 December 1988 subject to certain terms and conditions set out in a letter dated 6 November 1988. This letter also referred to negotiations to sell the plant to one BT Doshi of Bombay at the price of US$1.6m subject to governmental approvals in India. The said loan was to be repaid by 30 June 1989 in the event that Doshi was unable to buy the plant. As at the date of hearing, the loan has not yet been disbursed.

On the same day, ie 6 November 1988, the company entered into an agreement ('the relocation agreement') to sell the company's plant and machinery to Doshi at US$1.6 m subject to various conditions, amongst which were (a) the obtaining of governmental approvals and the provision of technical assistance by the company; (b) payment of the purchase price by irrevocable letter of credit to be opened prior to dismantling of the plant but not later than 15 March 1989 to be opened by such reputable bankers and such form and substance acceptable to the company.

The relocation agreement was signed without the consent of Indian Bank which had stipulated as a condition for its consent (the plant and machinery being subject to a fixed charge) that a deposit of US$100,000 or Indian rupees 2.5 m be paid by Doshi to the bank. After the relocation agreement was signed, the bank was still prepared to grant its consent and extend the repayment date of its outstandings to June 1989 provided 10% of the purchase price was paid to the bank. This requirement was notified to the company on 17 November 1988 with a warning to appoint receivers and managers. This condition has not been complied with.

The company's case is that unless the company is able to 'see through the relocation of its manufacturing assets and complete the outstanding contracts there is no money ... now or in the future to pay off even part of its said aggregate debts ...' (para 7 of the petition). For this reason, the company is of the view that placing the company under judicial management would 'achieve the survival of the company on the whole or part of its undertaking as a going concern and a more advantageous realization of the company's assets would be effected than through a winding up and the interest of the creditors would be better served' (para 20 of the petition).

This petition is opposed by Indian Bank, Mayertro and three other unsecured creditors which together hold more than 50% of the indebtedness of the company. Indian Bank have on 18 January 1989 exercised their powers as debenture holders and appointed receivers and managers of the undertaking and assets of the company but these officers were unable to assume office by reason of this petition. Two main grounds of opposition were advanced by the creditors. The first was that the petition was not made bona fide, and the second was that no public interest was involved in this petition.

On the question of bona fides, the contention was that the petition was made with the sole purpose of preventing Indian Bank from appointing receivers and managers, to suspend payment of its debts to all creditors and to prevent Mayertro from repossessing the factory. It

was also contended that the relocation agreement was 'unusual' in that the purchaser was not required to put down any deposit. The credit manager of Indian Bank, in his affidavit, has also deposed that Doshi had indicated to the bank on 30 September 1988 that he needed only two to three weeks to comply with the requirements of the Indian authorities in order to obtain approval for the purchase of the plant. The company has not any affidavit to show what steps have been taken by Doshi to apply for such approvals.

As to the question of public interest, reference was made to s 227B(10) of the Companies Act (Cap 50, 1988 Ed) which provides as follows:

> Nothing in this section shall preclude a court–
>
> (a) from making a judicial management order and appointing a judicial manager if it considers the public interest so requires; or
>
> (b) from appointing, after presentation of a petition and on the application of the petitioner, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may, if the court sees fit, be the person nominated in the petition. The interim judicial manager so appointed may exercise such functions, powers and duties as the court may specify in the order.

Counsel for Mayertro submitted that this provision required the company to show that it was in the public interest that the company be placed under judicial management, that the facts as set out in the petition failed to show that any public interest was involved and that only the private interest of the company and the shareholders would be served by such an order. In this connection, the court was urged to take into account the views of the majority creditors who were opposing the petition.

Although counsel for the company made an application to the court for a short adjournment to enable Doshi to file an affidavit to demonstrate his bona fides and ability in carrying out the relocation agreement, I decided not to grant the adjournment and instead dismissed the petition on the ground that this was not an appropriate case for judicial management.

As, I believe, this may be the first case of an unsuccessful application to place a company under judicial management, I should give my reasons for dismissing the petition.

Section 227A provides that:

> Where a company or where a creditor or creditors of the company consider that –
>
> (a) the company is or will be unable to pay its debts; and
>
> (b) there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up,
>
> an application may be made to the court under section 227B for an order that the company should be placed under the judicial management of a judicial manager.

Under s 227B, the court has the power to make a judicial management order in relation to a company if, and only if:

> (a) it is satisfied that the company is or will be unable to pay its debts; and
>
> (b) it considers that the making of the order would be likely to achieve one or more of the following purposes, namely:
>
> (i) the survival of the company, or the whole or part of its undertaking as a going concern;
>
> (ii) the approval under s 210 of a compromise or arrangement between the company and any such persons as are mentioned in that section;
>
> (iii) a more advantageous realization of the company's assets would be effected than on a winding up.

In this petition, I was satisfied that the company was unable to pay its debts but I did not consider that the making of the order would be likely to achieve any of the purposes set out in s 227B(1)(b) (purpose (ii) not being relevant in any case) for the following reasons. Firstly, the survival of the company did not depend on placing the company under judicial management so much as ensuring that the relocation agreement was implemented by the parties thereto. It should be noted that the sale price of the plant far exceeded the total indebtedness of the company, so that on completion of the sale, the company would realize a large surplus. Counsel for the company conceded, correctly, in my view, that the relocation agreement was binding on the parties thereto, and there was no evidence to show that the receivers and managers were not equally fit and competent to perform the relocation agreement. There was also no reason to suggest that the receivers and managers were not in a position to carry out the existing contracts. Indeed, counsel for the company went so far as to suggest that the receivers and managers could be appointed as the judicial managers. In my view, if the purposes sought to be achieved by the company in judicial management can equally be achieved by the creditors without any detriment to the company or its shareholders, the company has not made out a valid case for depriving a secured creditor of its contractual right to assume possession and control of its security.

Secondly, since the company has agreed to dispose of its manufacturing plant which, in effect, constitutes its entire undertaking, the question of rehabilitating the company or of preserving all or part of its business as a going concern does not arise: the company would have no going concern or part thereof as a manufacturer of printed circuit boards upon the disposal of the plant.

Thirdly, the company has also failed to show that placing the company under judicial management would result in a more advantageous realization of the company's assets than on a winding up. Indeed, if the company were wound up, the liquidators would simply take over the performance of the relocation contract and realize the proceeds of sale.

Finally, the relocation agreement contains a number of unusual features, the most notable of which is the agreement of Doshi to pay US$1.6m by way of irrevocable letter of credit in form and substance acceptable to the company, prior to dismantling of the plant, without any assurance as to when the plant would actually be dismantled, shipped and reassembled in Bombay. In my view, the open-endedness of this vital term in the relocation agreement calls into question the bona fides of this transaction.

Accordingly, I decided that allowing the receivers and managers to perform the relocation agreement would better serve the interests of all parties interested in the proceeds of sale than to allow the company to do so. If the transaction were bona fide, everyone would gain from its implementation; if it were not, then it was a ruse to buy time.

I have also when dismissing this application given as a ground that the company had not satisfied me that it was in the public interest that a judicial management order be made. I should like to elaborate on this ground to avoid any misunderstanding as to its purport. The argument on public interest was advanced by counsel for Mayertro, and was to the effect that, by reason of s 227B(10) of the Companies Act, a company seeking a judicial management order must, in addition to satisfying the court of the requirements of s 227B(1), prove that the public interest so requires it. This is not the correct approach. Section 227B(10)(a), in my view, has the effect of vesting in the court an overriding power to make a judicial management order if it considers the public interest so requires notwithstanding that it may not be satisfied that the making of the order would be likely to achieve one or more of the purposes set out in s 227B(1). This is undoubtedly the effect of s 227B(10)(a) in relation to s 227B(1). Whether it has the same effect in relation to s 227B(7) which provides that 'a judicial management order shall not be made in relation to a company' in the circumstances prescribed therein, is not absolutely clear.

The expression 'public interest' in s 227B(10) is not statutorily defined. But since its existence is a requirement for the exercise of an overriding power, it would connote an interest or object which, if achieved, would transcend any or all of the purposes prescribed in s 227B. Whatever may be the public interest contemplated by s 227B(10), counsel for the company conceded that there was no evidence to support a claim that in this petition public interest requires that the company be placed under judicial management.

The petition was accordingly dismissed with costs.

Petition dismissed.

Solicitors: *Cheow Hin & Partners*; *Mallal & Namazie*; *PK Wong & Advani.*

Reported by *Ng Sheau Jiuan*

Good Property Land Development Pte Ltd v Societe Generale

HIGH COURT (SINGAPORE) – SUIT NO 39 OF 1989
CHAN SEK KEONG J
4 FEBRUARY 1989

Civil Procedure – Interlocutory injunction – Mortgagors seeking interlocutory injunction restraining mortgagees from completing sale of mortgaged property – Allegation that sale of property made at an undervalue in bad faith – Principles applicable

Land Law – Mortgage of land – Mortgagors seeking interlocutory injunction restraining mortgagees from completing sale of mortgaged property – Allegation that sale of property made at an undervalue in bad faith – Principles applicable

The plaintiffs had mortgaged the property known as the Hotel Meridien ('the mortgaged property') to the defendants as security for a loan granted to the plaintiffs. The plaintiffs eventually defaulted in repaying the loan and interest thereon. The defendants later entered into an agreement with Hotel Properties Ltd ('HPL') to sell the mortgaged property to the latter for the sum of $180.2m so as to realize the security created by the mortgage. The plaintiffs commenced an action by writ of summons against the defendants seeking, inter alia, an order that the agreement be set aside and the plaintiffs applied for an interlocutory injunction restraining the defendants from completing the sale to HPL.

The plaintiffs' allegation was that the defendants had sold the mortgaged property at an undervalue in bad faith, ie with calculated indifference to the interest of the plaintiffs as mortgagors, or otherwise in breach of the defendants' duty as mortgagees.

The plaintiffs alleged, inter alia, that:

(a) the defendants failed to ascertain the true market value of the mortgaged property before selling it to HPL and that no proper valuation was obtained from valuers with expertise in valuing a first class hotel like the mortgaged property;
(b) the defendants were prepared to sell the mortgaged property at the reserve price of $175m which was just sufficient to cover their own exposure;
(c) the defendants insisted on selling the mortgaged property along with the management contract in respect of it in order to protect the interest of the Meridien Group who were the managers of the mortgaged property and this preference diminished the number of prospective buyers as many of them, including Forbin Ltd ('Forbin'), a company control-